

when a museum failed to notify a Federal agency of its collections. Ms. Mattix stated that, ideally, the museum would contact the Federal agency and confirm the agency's collections. However, the Federal agency has the ultimate responsibility for items under its control. Ms. Atalay asked if Ms. Pardo confirms that the repositories are completing consultation as required under NAGPRA. Ms. Pardo stated that she does. Ms. Atalay asked what timeframes have been set for the repositories. Ms. Pardo stated she is working on a very short deadline of two weeks with three repositories, due to a potential funding opportunity through the DOI. Ms. Pardo stated that the BIA is systematically working with the remainder of the repositories to identify collections, beginning with repositories with the largest potential collections. Ms. Atalay asked for clarification of the point in the BIA's report that the extent of the BIA's responsibility is still being determined. Ms. Pardo stated that the BIA had requested an opinion from the Solicitor's Office on whether the BIA owns items excavated from Indian lands under Antiquities Act permits from 1906 to 1979. Mr. Simpson stated that opinion was requested in 1998 and, while it has not yet been issued, it is near the top of the priority list and recent progress has been made. Mr. Wright, Jr., stated that resolution of issues, such as this opinion, were important to help complete NAGPRA work. Ms. Worl stated the Review Committee looks forward to an update from Ms. Pardo at the November 2012 meeting. Ms. Worl asked if the National NAGPRA Program could provide a report on the overall issue of Federal agency collections in repositories, for the Review Committee's consideration at the November 2012 meeting.

Discussion: Review Committee's Position on the Proposed Redefinition of "Native American" for Purposes of NAGPRA

Discussion on May 10, 2012

Mr. Barker stated that the Review Committee received a copy of a letter from the DOI stating the DOI's position on whether to amend the definition of Native American. Mr. Barker stated he was surprised that the DOI established a position on this topic without referring the matter to the Review Committee or seeking its opinion. Mr. Barker stated that in its 2011 report to Congress, the Review Committee did not advocate for this change, but suggested that Congress should take up the matter as it was deeply problematic, with strong feelings on all sides. Ms. Hutt stated that during the NAGPRA hearing hosted by the Senate, Senator Akaka specifically asked a direct question of the witness, which was referred back to DOI. Mr. Barker stated he understood that the Review Committee was to advise the DOI on NAGPRA issues. Mr. Simpson stated that the Review Committee provides advice to the Secretary upon request. Ms. Mattix stated that Congressional inquiries require a fast response. If the Review Committee has additional views on this issue and would like to provide those to the Secretary, the DOI could certainly consider them.

Ms. Hutt stated that when she was informed of the Senate hearing, she requested that the Review Committee be invited to appear but was told that the schedule was full. Mr. Wright, Jr., stated that when he was invited to appear at the Senate hearing, he asked for clarification and was told he was being invited as a tribal leader, not as a member of the Review Committee. Mr. Wright, Jr., stated that at its October 2009 meeting, the Review Committee reaffirmed its support for the amendment to the definition, and he expressed this position in his testimony. Mr. Wright, Jr., stated he also included in his testimony a request that the Administration be asked their position.

Ms. Atalay stated the Review Committee did discuss this issue at its last meeting and included a recommendation in its report to Congress that Congress consider amending this point. Ms. Worl stated that she was absent from that meeting, but the issue could once again be included in the Review Committee's report to Congress.

Discussion on May 11, 2012

Mr. Barker stated that he circulated, for the Review Committee members' consideration, a quick draft of a letter to the Secretary, which was shown on the screen for the audience. Ms. Worl suggested adding language that asks that the Review Committee be invited to participate when Congress convenes a hearing on NAGPRA. Mr. Wright, Jr., recommended formulating a formal engagement with the Secretary's Office on specific NAGPRA related issues, and also to focus specifically on the Administration's position on the definition. Ms. Worl suggested the following language, "The NAGPRA Review Committee respectfully requests that the Secretary engage the Review Committee and seek its position on issues relating to NAGPRA. We understand that in the past the Secretary was involved to comment, and in this situation the Review Committee's input was not sought or obtained." Mr. Wright, Jr., stated it was important to capture Mr. Barker's concern with regard to the release of the Administration's position on the

definition, as well as the issue of inclusion of the Review Committee in consultation.

Ms. Worl stated the Review Committee was dealing with two issues; the engagement of the Review Committee in working with the Secretary on NAGPRA issues, and the definition of Native American. Ms. Worl asked for clarification from counsel. Ms. Mattix stated that the Review Committee's specific duties are outlined in Section 8 of the statute. Ms. Mattix stated that this issue, an incoming Congressional question regarding interpretation or amendment of the statute, is not a delineated responsibility of the Review Committee. This was a question addressed to the DOI asking for the DOI's opinion. The Review Committee's responsibilities in the statute state that the Secretary "may ask the Committee to perform such other functions as the Secretary may assign to the Committee," so it is certainly within the Secretary's discretion to ask for the Review Committee's opinion on these types of matters, but it is not a legal obligation.

Mr. Barker redrafted the letter, which was brought back to the Review Committee for further discussion. Mr. Wright, Jr., suggested striking the word "strongly." The Review Committee approved the change. Ms. Atalay suggested a paragraph delineation for clarity. The Review Committee approved the change.

Review Committee Motion

Ms. Atalay made a motion to send the letter to the Secretary of the DOI through the DFO. Mr. John seconded the motion.

Ms. Hutt stated that if Ms. Worl would sign the letter as Review Committee Chair, Ms. Hutt would forward the letter, with a cover letter and background briefing, to the Assistant Secretary of Fish and Wildlife and Parks, who been delegated NAGPRA authority from the Secretary of the DOI.

Mr. Wright, Jr., asked about including the portion regarding the actual definition of Native American, since the Review Committee has consistently supported the amendment. Mr. Barker stated that the transcript of the previous meeting, as well as the report to Congress, will show that the Review Committee did not endorse the amendment but recommended that Congress open hearings to consider the amendment. Ms. Farm suggested revising the letter to remove the clause, "and some of our members support it." The sentence would say, "Regardless of our views of the proposed redefinition, in the future we would urge the Secretary and Department to make better use..."

Mr. Wright, Jr., asked which would have greater standing, an issue acted upon specifically by the Review Committee or a reference in the Review Committee's report to Congress. Ms. Hutt stated that could be assessed either way. The report to Congress informs the actions of Congress, and the purpose of the letter, as described by Mr. Barker, was to have Congress regard the Review Committee in any future decision making.

Ms. Worl suggested deleting the phrase, "regardless of our views on the proposed definitions and some of our members." The Review Committee approved the change.

Review Committee Motion

Ms. Atalay made a motion to send the revised letter to the Secretary of the DOI through the DFO. Mr. John seconded the motion. The motion was passed by unanimous vote.

Ms. Worl asked the wish of the Review Committee regarding the amendment to the definition of Native American. Mr. Wright, Jr., stated he was not sure that any action at this point would hold any merit with regard to the Administration's position. Ms. Worl asked Ms. Atalay to Chair the discussion. Ms. Atalay agreed.

Ms. Worl stated that, from her perspective, the Review Committee has consistently favored the amendment. Ms. Worl stated she is not aware of any opposition to the amendment from the scientific community. So it seems that in this instance, there is agreement in recommending this to Congress. This is an action that Congress will take. The Review Committee is significant in terms of stating its position as to how to deal with the issues that were raised by the Kennewick Man. So if the Review Committee wants Congress to really view the Committee that it created to deal with the issues of NAGPRA, then Congress would be looking to the Review Committee for its position. Ms. Worl stated she firmly supports the amendment, and would have no problem voting on it. If other members feel differently, then the Review Committee should hear that. Ms. Worl stated she missed the last meeting and the discussions regarding the definition.

Mr. Barker stated that he does not necessarily oppose the amendment, but he does have some concerns about it. Mr. Barker stated his concern, which was expressed in the DOI's statement, is that Native American should be determined without regard for whether there is biological or cultural affiliation with Native American groups. Mr. Barker stated that a fundamental change has occurred from what NAGPRA was based on, which was the idea that ancestral remains should be returned to descendant communities, to a new interpretation, which says it does not matter whether descendant communities receive back ancestral remains. Mr. Barker stated that he was uncomfortable with amending the law to further move from the idea of ancestral remains being returned to descendant communities, until he receives further clarity about the issue.

Ms. Worl stated she understood the amendment would not change the process for repatriation but just defines that all human remains dating after 1776 were Native American, while those predating 1776 were not Native American.

Review Committee Motion

Ms. Worl made a motion that the Review Committee consider this issue at the November 2012 meeting, and that the National NAGPRA Program provide background material concerning the issue prior to the meeting for the members' consideration. Ms. Farm seconded the motion. The motion passed by unanimous vote.

Presentation: NAGPRA Update, Bureau of Land Management

Presentation

Ms. Emily Palus, Deputy Division Chief, Division of Cultural, Paleontological Resources, and Tribal Consultation, Bureau of Land Management (BLM), DOI, Washington Office, thanked the Review Committee for the opportunity to provide an update on the BLM's implementation of NAGPRA. Ms. Palus introduced Mr. Jerry Cordova, Senior Tribal Coordinator and Acting National NAGPRA Coordinator, BLM, Washington Office, and Mr. Byron Loosle, Deputy Preservation Officer, State Archeologist, and NAGPRA Coordinator, Nevada State Office. The BLM is a multiple-use land management agency with a mission to sustain the health, productivity, and diversity of America's public lands for the use and enjoyment of present and future generations. The BLM manages 245 million acres of public lands, most of which are located in 12 western states and Alaska, and 700 million acres of subsurface mineral estates throughout the nation. BLM is a tiered organization with 12 state offices, under which are 46 districts and 133 field offices. Implementation of NAGPRA is assigned to the Cultural Resources Program, which includes management of cultural and paleontological resources on the public lands, as well as the associated museum collections, records and data, conformance with Section 106 of the National Historic Preservation Act (NHPA), and oversight of the BLM's tribal relations. BLM consults with Indian tribes on a government-to-government basis on a number of issues and projects involving management of public lands, in addition to NAGPRA work.

Ms. Palus stated that BLM's heritage resources include nearly 330,000 recorded cultural properties, 83 historic properties listed on the National Register and 38,000 properties eligible for listing, 63,000 monitored archeological sites, 390 maintained historic structures, 25,000 recorded paleontological localities. However, only about 9 percent of the 245 million acres of BLM public lands have been inventoried for heritage resources, so these figures will increase. In addition to the resources on the lands, about 10 million documented artifacts and fossils recovered from BLM lands are now located in 3 BLM facilities, 4 other Federal facilities, and 133 non-Federal museums and universities. These figures include both cultural and paleontological resources and approximately 70 of those non-Federal repositories hold archeological collections from the public lands.

At the policy level, implementation of NAGPRA is coordinated by the Washington office under the Assistant Director for Renewable Resources, Planning and the Division of Cultural, Paleontological Resources and Tribal Consultation. In addressing NAGPRA, the National Curator and NAGPRA Coordinator, a position established in 1994, provides policy oversight, technical assistance and training to the BLM state and field offices. The BLM's 12 state directors are responsible for primary operational compliance, for new discoveries of Native American human remains and cultural items found on the lands under their jurisdiction, and for collections of Native American human remains and cultural items removed from public lands prior to 1990 when NAGPRA was enacted. Staff work is assigned to the 12 state cultural program leads. Compliance with NAGPRA is one of many duties assigned to the cultural specialists, and the BLM has incorporated additional training to enhance staff capacity to implement NAGPRA. To address Section 3, New Discoveries, the BLM integrated the requirements of planning for intentional

1 SONYA ATALAY: Yes, thank you.

2 ROSITA WORL: Any other questions?

3 I think we're ready for your comment, Alex.

4 ALEXANDER BARKER: I'm not sure if this is the
5 appropriate place, and I defer to the Chair, we
6 also have in our packet a letter to Senator Akaka
7 regarding the Department of the Interior's view in
8 response to a question posed to IA as I understand
9 it, is that correct?

10 ANNA PARDO: It's a follow-up to the GAO
11 report, and all the bureaus were asked to put
12 together a response to what is - what is the need
13 in terms of budget, funding, and a timeline for
14 completing all the work. And I'm referring to IA's
15 response, but I believe all the bureaus responded,
16 and the Department assembled a complete response.

17 ALEXANDER BARKER: Thank you. I apologize. I
18 think I was unclear. We also have in our packet a
19 letter from the Department of the Interior stating
20 the Department of the Interior's position on
21 whether to amend the definition of Native American,
22 and according to the cover letter it was from the
23 Department of Indian Affairs - the Bureau of Indian
24 Affairs, but it is a statement on behalf of the
25 Department of the Interior of the DOI's position,

1 if I am reading it correctly.

2 ANNA PARDO: Are you talking about the "is or
3 was" amendment?

4 ALEXANDER BARKER: Yes.

5 ANNA PARDO: I didn't provide that.

6 ROSITA WORL: What is - I think I saw that in
7 the packet, and -

8 SHERRY HUTT: Yes, it is in the packet.

9 ROSITA WORL: Yes, it was in the packet, and it
10 wasn't clear where that agenda item rested. And I
11 think it might - I don't know that it was related
12 to this issue.

13 SHERRY HUTT: Yes, that was in the Senate
14 hearing that Senator Akaka had invited, and in
15 response to Assistant Deputy Park Service Director
16 Peggy O'Dell's testimony, and then that letter was
17 put forth then. That came through in one of the
18 presentations. We put it in the materials - you
19 may have had that before. I believe I may have
20 sent that to the Review Committee close in time to
21 the time that it was distributed as well.

22 ROSITA WORL: Well, since we've raised the
23 issue, we will go ahead and allow a discussion on
24 this. Go ahead, Stephen.

25 STEPHEN SIMPSON: I was - thank you, Madam

1 Chair. I was just going to clarify that Mr. Barker
2 is correct in that the cover letter to this
3 response to the Senate committee does say that the
4 responses were prepared by the Bureau of Indian
5 Affairs. In fact, it was not only the Bureau of
6 Indian Affairs, it was also other portions of the
7 Department as well that were involved in that.
8 Just as that point of clarification.

9 ALEXANDER BARKER: Thank you. I confess I'm
10 slightly surprised that the Department of the
11 Interior has established a position on this topic
12 without referring the matter to the Review
13 Committee or seeking the view of the Review
14 Committee, since this would seem to be something
15 fairly significant involving the Native American
16 Graves Protection and Repatriation Act. Is there a
17 part of this that I'm misunderstanding or not -- or
18 am I uninformed? But I would note that the Review
19 Committee specifically in its report to Congress
20 did not advocate for this change but suggested that
21 Congress should take up the matter because it was
22 deeply problematic and there were strong feelings
23 on all sides.

24 SHERRY HUTT: If I might, Madam Chair, at the
25 NAGPRA hearing that was hosted by the Senate,

1 Senator Akaka chairing the matter, he specifically
2 asked a direct question of the witness. The
3 witness was not prepared to answer at that time,
4 and then it came back to Department solicitors.
5 And all of the bureaus -- yes, the programs that
6 were served, but the bureaus in Interior, and they
7 -- and they came up with that response. It did not
8 come to the Review Committee; it was a direct
9 response to the Department's position on the issue.

10 ALEXANDER BARKER: And do I understand the
11 Review Committee does not advise the Department on
12 NAGPRA issues, or the Secretary?

13 SHERRY HUTT: When requested, yes. Let me --
14 yes, Counsel?

15 STEPHEN SIMPSON: Yes, when -- the Review
16 Committee provides advice to the Secretary at the
17 request of the Secretary. And so it is -- under
18 FACA, that's the way advisory committees work and
19 that's the way this one was worked by Congress or
20 set up by Congress.

21 CARLA MATTIX: When one of these Congressional
22 inquiries come in following testimony, we don't
23 have the luxury of putting off Congress and saying,
24 we will respond to you in six months after we,
25 perhaps, can get the views of the Review Committee

1 also. We have to respond to these pretty quickly.
2 So that is why the response went out very soon
3 after the letter from Senator Akaka came in. I'm
4 sure that if the committee has additional views on
5 this and would like to provide those to the
6 Secretary, the Department can certainly consider
7 those.

8 SHERRY HUTT: When the -- when the hearing was
9 established, when it was set, I was contacted at
10 one point by the staff for the Senate Indian
11 Affairs and told that this hearing would occur, and
12 I then asked if they would have an invitation for
13 the Review Committee. At that time -- was that the
14 hearing that Mervin testified but not then on
15 behalf of the Review Committee, so I wasn't clear
16 how that change happened, but I want you to know
17 that, you know, acting as the manager, not as the
18 DFO at that moment, when something comes through of
19 which I am advised, the Senate committee -- this
20 being the Senate committee, I specifically
21 requested that the Review Committee be invited to
22 appear, and there was a Review Committee member who
23 did address the committee beyond that.

24 Previously, there was a hearing at the House
25 the year before, and I had asked for the Review

1 Committee to be invited. At that time, I was told
2 that the schedule was full. But that's - when I
3 get wind of courtesy from any Senate or House
4 staff, that's what I do. I ask them if they would
5 invite the Review Committee. That's the way we can
6 plug the Review Committee in, in between meetings.
7 Other than that, it's as Carla had said. Then
8 there's your report to Congress.

9 ROSITA WORL: Alex, are you satisfied, or do
10 you have follow-up questions?

11 ALEXANDER BARKER: These are issues that I
12 think we need to discuss, but I think we need to
13 get some more information before we can do so.

14 ROSITA WORL: It is an issue that I think this
15 Review Committee will bring back again for
16 discussion. We have - the Review Committee has had
17 positions on this amendment and has reported on
18 that in its report to Congress, and I think it's
19 still a continuing issue that the Committee will
20 continue to address.

21 Are there any further comments? Mervin.

22 MERVIN WRIGHT, JR.: Just to follow up, when I
23 was invited to testify last June, that was the
24 first question I asked was if I was being invited
25 as a committee member or as a tribal leader, and it

1 was indicated that I was being invited as a tribal
2 leader. And at that point it never dawned on me to
3 ask or inquire whether or not the Review Committee
4 was being asked to be invited. It just - I never
5 thought of that.

6 The Review Committee in 2010, October, or
7 let's see - I know it was in the meeting in
8 Florida, the Review Committee did reaffirm its
9 support for the amendment to the definition. I
10 knew that the committee had at one point
11 established a position to support the amendment
12 when Secretary Gale Norton was in office, the
13 Interior Department opposed the definition and so
14 it was that time in my testimony that I felt it was
15 an opportunity to include that as part of my
16 testimony that the Administration should be asked
17 what their position is. And I think that when the
18 Government was testifying, I believe that was also
19 something that came up in their testimony. So the
20 letter in the position - you know, in reading it, I
21 think from my perspective, a simple yes, we support
22 it would have been fine, but it goes in further -
23 it elaborates further into it, so - but just a
24 little bit of background from my perspective.
25 Thank you.

1 ALEXANDER BARKER: Madam Chair?

2 ROSITA WORL: Go ahead, Alec.

3 ALEXANDER BARKER: Thank you, Mr. Wright. I
4 appreciate the clarification. I believe at the
5 last meeting you had pointed out to me that -
6 (portion of comment inaudible) - not to do so, as
7 its last meeting.

8 ROSITA WORL: Sonya.

9 I'm so sorry. We've raised an issue that's
10 probably, you know, beyond your presentation, but
11 if you don't mind, we'll go ahead and continue, and
12 you can still stay there because we may have some
13 follow-up questions.

14 Go ahead, Sonya.

15 SONYA ATALAY: I just wanted to point out that,
16 in fact, this was an issue that the committee did
17 discuss at our previous meeting, and we had some
18 discussion about this in our report to Congress.
19 And as I recall, in our report to Congress, we did
20 ask Congress to consider amending this point. So
21 that was in our report to Congress, in the most
22 recent report. I just wanted to point that out.

23 ROSITA WORL: And I also just wanted to add for
24 clarification, I unfortunately missed that meeting,
25 which is why I know it's going to be again an issue

1 PATRICIA CAPONE: Thank you all.

2 ROSITA WORL: Thank you.

3 Well, we are at noon and I think we're ready
4 for our lunch break. And we will reconvene at
5 1:30, so the Review Committee is in recess until
6 1:30.

7 **LUNCH**

8 ROSITA WORL: We will now call the Review
9 Committee back into order, and our first agenda
10 item is the discussion and review of the Review
11 Committee's Dispute Procedures and Findings
12 Procedures. And we'll ask Sonya, who is the Chair
13 of this subcommittee, to go ahead with that report.

14 SONYA ATALAY: Sorry, I just ran back from
15 lunch, so I'm out of breath. I'll catch my breath
16 in a minute. Well, the first thing I'll -

17 ROSITA WORL: We could review the letter if
18 you want to take a few moments.

19 SONYA ATALAY: That would be great, thank you.

20 **DISCUSSION: REVIEW COMMITTEE'S POSITION ON THE**
21 **PROPOSED REDEFINITION OF "NATIVE AMERICAN" FOR**
22 **PURPOSES OF NAGPRA**

23 ROSITA WORL: I think let's just go ahead and
24 do the letter. We had a discussion yesterday where
25 we felt - the Review Committee members were feeling

1 that we needed to respectfully request the
2 Secretary to engage the Review Committee whenever
3 NAGPRA issues arise. And so we had one of our –
4 one of our Review Committee members had drafted a
5 letter that we should review and look at now. We
6 wanted to also, whenever there was a hearing on
7 NAGPRA in Congress, we felt also that the Review
8 Committee should be invited. We're – it's a very
9 delicate issue to say to Congress, you should
10 advise the advisory body that you established to
11 deal with NAGPRA issues. So we are proposing to
12 send a letter.

13 Go ahead, Alex. I'll let you take the lead on
14 this.

15 ALEXANDER BARKER: Thank you, Madam Chair.

16 ROSITA WORL: Oh, Alex, if you could speak more
17 closely into your mic.

18 ALEXANDER BARKER: Thank you, Madam Chair. I
19 have circulated a quick draft of a letter that
20 could go to the Secretary, which was circulated to
21 members of the Review Committee this morning. It's
22 up on the screen for the audience. And Chairman
23 Worl had suggested that we might also want to add a
24 brief statement, something to the effect of, We
25 would also respectfully request that the Secretary

1 use his good offices to encourage that Review
2 Committee members are invited to House and Senate
3 Congressional hearings regarding NAGPRA and related
4 topics. Is that - does that capture the spirit of
5 what you were suggesting, Madam Chair?

6 ROSITA WORL: I think we wanted specific
7 language insofar as when there was a - when
8 Congress was convening a hearing on NAGPRA that the
9 Review Committee be invited to participate, and if
10 the Secretary would convey that to, you know, the
11 appropriate committee holding the hearing.

12 MERVIN WRIGHT, JR.: Madam Chair?

13 ROSITA WORL: Yes.

14 MERVIN WRIGHT, JR.: I would - I would follow
15 and concur with that, because the way I'm reading
16 this letter - I mean, it is after the fact and I
17 think we should probably try to formulate it more
18 of a formal engagement with the Secretary's Office
19 on, you know, specific NAGPRA related issues. And
20 we might want to include this as part of an example
21 that we would like to state, you know, but I think
22 that if we're going to focus specifically on the
23 position of the Administration with regard to the
24 definition, I'm not sure it would have any meaning
25 or result.

1 ROSITA WORL: So I mean, what we're trying -
2 you know, I guess the question I hear is do we need
3 to reference, you know, the past action of the
4 Secretary where we were not engaged. But just as a
5 positive statement to the effect that the NAGPRA
6 Committee was established by Congress and that we
7 would request that the Secretary - simply request
8 that the Secretary engage the committee on any
9 issues or events in which NAGPRA would be discussed
10 and at least seek our input on it without reference
11 to the past event.

12 ALEXANDER BARKER: Madam Chair, for what it's
13 worth, I think my concern would be if we don't
14 reference the past event, I suspect such a letter
15 would have the - would receive the response, "Of
16 course, we always do." What I've - I've also
17 suggested some wording that may address what you
18 were talking about. It's being added right now,
19 and I apologize if there are any errors. They're
20 mine and based on how badly I write.

21 "Use his good offices," I think.

22 ROSITA WORL: That's good. That part looks
23 good. Yes. Okay, now let's take care of your -
24 what did you - let's go back to the first part of
25 the letter.

1 My sense is that we should, you know, state it
2 in the positive and then just say, for example, in
3 this - very recently there was this action in which
4 we were not involved. But if we could start it off
5 at least in a positive reference. So I would say,
6 The NAGPRA Review Committee respectfully requests
7 that the Secretary engage the Review Committee and
8 seek its position on issues relating to NAGPRA. We
9 understand that in the past, you know, the
10 Secretary was involved to comment, and in this
11 situation the Review Committee was not - its input
12 was not sought or obtained. Like that?

13 ALEXANDER BARKER: Thank you.

14 ROSITA WORL: Just trying to be politicians
15 here.

16 MERVIN WRIGHT, JR.: Right. Well - yes, I
17 think it's important that, you know, we capture
18 what Alec's concern is here with regard to the
19 release of the Administration's position on the
20 definition. And as a committee, you know, we just
21 want - we also want to grab their attention. We
22 want to make sure that they recognize that, you
23 know, we see it as a potential oversight on their
24 part for not including Review Committee in
25 consultation. But at the same time I guess the

1 question would be to, you know, our counsel, where
2 is that obligation of the Secretary to engage the
3 Committee on matters such as this position they
4 issued on the definition.

5 ROSITA WORL: Just for clarity - just for
6 clarity now, we have two issues - two issues that
7 we're dealing with. One is the engagement of the
8 Review Committee, the Secretary engaging the Review
9 Committee and us, you know, reacting or working
10 with the Secretary. Also, in discussion, we will
11 be discussing the definition. So we have two
12 separate issues. But in this instance, we are just
13 referencing - we are referencing an action. But we
14 want to be able to state clearly the Review
15 Committee position.

16 SHERRY HUTT: And I was just - while you were
17 initially asking that question, I was -

18 ROSITA WORL: But we have a question to
19 counsel, yes, about the obligation.

20 SHERRY HUTT: Yes, about how we're going to do
21 this.

22 ROSITA WORL: Let's just answer the first
23 question, first, is the Secretary legally required
24 to consult with us?

25 CARLA MATTIX: On these types of matters -

1 ROSITA WORL: I think - is your mic on?

2 CARLA MATTIX: Hello. I mean, it depends on
3 the situation, and generally the duties of the
4 Review Committee - our specific duties are laid out
5 in Section 8 of the statute, so you can refer back
6 to that and see what the specific duties are.

7 For the issue that brings us to this
8 discussion, there was an incoming Congressional
9 question regarding the interpretation or amending
10 of the statute. That is not a delineated
11 responsibility of the Review Committee. That was a
12 question coming into the Department of Interior and
13 asking for the Department's views. Now, under the
14 section for the Review Committee responsibilities,
15 it says that the Secretary "may ask the Committee
16 to perform such other functions as the Secretary
17 may assign to the Committee." So it's certainly
18 within the Secretary's discretion to ask your
19 opinion on these types of matters but it's not a
20 legal obligation.

21 ROSITA WORL: Okay. I think that answers the
22 question, but in this case we are just respectfully
23 requesting that he does seek our counsel, which I
24 think is proper.

25 So Alex is busy wordsmithing.' And you -

1 should we hold this in abeyance now? Are you ready
2 to proceed, because we could do that?

3 Alex, do you want - so you could have the time
4 to write that as we go through this other agenda
5 item.

6 ALEXANDER BARKER: Sure.

7 ROSITA WORL: All right?

8 SONYA ATALAY: Okay.

9 ROSITA WORL: If that's okay with the
10 committee, we'll do that and give Alex some time to
11 write a great letter for us.

12 SHERRY HUTT: While he's doing that, if I might
13 talk about process, could I ask you about process,
14 how you envision this being delivered? Is that
15 what you're -

16 ROSITA WORL: No, okay, wait. Let's just -
17 we'll hold that for right now. Let's - we'll let
18 him write it, and we'll talk about that afterwards.
19 Let's go to Sonya, who has now caught her breath
20 and is raring to go.

21 **ACTION ITEM: DISCUSSION AND REVIEW OF THE REVIEW**

22 **COMMITTEE'S DISPUTE PROCEDURES & FINDINGS**

23 **PROCEDURES**

24 SONYA ATALAY: Yes. Okay, thank you, Madam
25 Chair, and thanks for your patience with the high

1 ERIC HEMENWAY: Aye.

2 ADRIAN JOHN: Aye.

3 ROSITA WORL: Aye.

4 MERVIN WRIGHT, JR.: Aye.

5 SONYA ATALAY: Opposed? The motion carries.

6 With that I will turn it back over to the
7 Chair, Rosita Worl.

8 ROSITA WORL: Thank you, Madam Chair.

9 **DISCUSSION: REVIEW COMMITTEE'S POSITION ON THE**
10 **PROPOSED REDEFINITION OF "NATIVE AMERICAN" FOR**
11 **PURPOSES OF NAGPRA - CONTINUED**

12 ROSITA WORL: Now if we could move back to our
13 previous agenda item, on the letter to the
14 Secretary of the Interior, and look at that revised
15 draft. Could it be up there?

16 MELANIE O'BRIEN: It is, yes.

17 ROSITA WORL: Okay, wonderful.

18 Has the committee had time to review that?

19 LINDALEE FARM: The next page?

20 MELANIE O'BRIEN: I'm sorry. I didn't want to
21 (portion of comment inaudible).

22 ROSITA WORL: Merv?

23 MERVIN WRIGHT, JR.: I'd like to suggest
24 striking the word "strongly" and just leave it as
25 support. That way there's no -

1 ROSITA WORL: Any objections? Any objections?
2 That's removed.

3 Further comments? Sonya.

4 SONYA ATALAY: Just one small comment. If we
5 could just make that final wording where we say,
6 "We would also respectfully request," if we could
7 just put that as a clear separate paragraph -
8 separate paragraph, just to emphasize it as a
9 separate thought.

10 **REVIEW COMMITTEE MOTION**

11 ROSITA WORL: Okay. Do we have a motion to
12 send this letter to the Secretary of the Interior?

13 SONYA ATALAY: So moved.

14 ROSITA WORL: We have a motion that the Review
15 Committee will send this letter to the Secretary of
16 the Interior through the DFO.

17 SHERRY HUTT: Yes, what we'll do - I was -

18 ROSITA WORL: First, we have that motion made
19 and seconded?

20 SHERRY HUTT: Yes.

21 LESA KOSCIELSKI: Who seconded?

22 SHERRY HUTT: Who seconded it?

23 ROSITA WORL: Who - was there a second to that
24 motion for the record?

25 ADRIAN JOHN: I'll second it.

1 ROSITA WORL: Adrian. Okay. We have a motion
2 made and seconded. Now, comments about process.

3 SHERRY HUTT: Yes, process. What we'll do -
4 because the Secretary has actually delegated NAGPRA
5 to the Assistant Secretary of Fish and Wildlife and
6 Parks, in consultation with the Assistant Secretary
7 for Indian Affairs. So if you don't mind, we'll -
8 shall we put your - you know, if you want to put
9 your letter on - did you want to sign it firsthand
10 on behalf of the Review Committee. If you would
11 just - if you would do the letter on plain
12 stationery - we've had some issues with what
13 stationery should the Review Committee use, just on
14 plain paper, and then if the Chair would sign that
15 letter as Chair of the Review Committee, and then
16 if you could just Fed Ex that to me so I have a
17 nice clear copy of your signature. And then I'll
18 put that into what we call, in bureaucratic speak,
19 a package, and then I'll get it up the chain where
20 it needs to go.

21 MERVIN WRIGHT, JR.: (Comment inaudible.)

22 SHERRY HUTT: Yes, I'll need to put a cover
23 letter on it and brief them and give them the
24 background and that sort of thing. And take it up
25 the chain so that all those in the - actually what

1 happens is it goes up through the leadership row,
2 all along the way, and that's a very educational
3 experience for all. So that's what we'll do.

4 MERVIN WRIGHT, JR.: I don't - I don't think
5 it's, you know, necessary to include the issue
6 regarding the definition, because the Review
7 Committee has supported it. The Review Committee,
8 as a committee, has supported it, not just some of
9 the members. Unless we took a vote and there was a
10 split vote, then I think you could reasonably and
11 logically say that there - some members support it.
12 But ever since 2010, the Committee has supported
13 the amendment, and so I don't know if this is going
14 to take away from, you know, the second part of
15 that second paragraph, but I would have to say that
16 if this was to go to a vote, I would oppose the - I
17 would oppose the motion.

18 ROSITA WORL: It would seem that we need to
19 clarify that. I mean, we have already adopted the
20 letter, but if there are no objections we'll go
21 back to that letter and make that clarification.

22 Go ahead, Alec.

23 ALEXANDER BARKER: I believe that the
24 transcript of the last meeting will show that the
25 report to Congress for 2011 did not endorse the

1 amendment. It recommended that Congress open
2 hearings to consider the amendment, because it's a
3 matter in which there are strong feelings on all
4 sides. And I think that the minutes of the meeting
5 will show that. I think that the actual transcript
6 of the meeting would also show that concerns were
7 specifically expressed by members of the Review
8 Committee who did not feel at that time they could
9 vote in favor of the amendment.

10 ROSITA WORL: Okay. We have an issue here for
11 the Review Committee to consider. We could either
12 change the letter to reflect the - let me, I might
13 get the years wrong, but we have two separate
14 reports to the Congress; one where the Committee
15 did endorse the amendment, and then we have the
16 second report to the Congress where we - there was
17 a change in the position. So we could either cite
18 those two - I mean, because the issue here is we
19 want the Secretary to consider or to invite the
20 NAGPRA Review Committee. That's the intent of this
21 letter here. So we could either delete it, delete
22 the reference to it, we could clarify and cite the
23 two reports to Congress, or we could vote on saying
24 what is the position of the Review Committee. So
25 we have three possible alternatives here, what is

1 the wish of the committee?

2 LINDALEE FARM: May I suggest another
3 alternative?

4 ROSITA WORL: Okay.

5 LINDALEE FARM: That we actually revise the
6 letter to simply delete the clause in the second
7 paragraph that says, "and some of our members
8 support it." Such that the sentence will say,
9 "Regardless of our views of the proposed
10 redefinition, in the future we would urge the
11 Secretary and Department to make better use..."
12 That way we don't talk about our position. It's
13 just - we should be invited. Regardless of how we
14 feel, we need to have input.

15 ROSITA WORL: So the - I mean, that would be
16 the deletion to the reference of the issue.

17 LINDALEE FARM: Correct.

18 ROSITA WORL: Okay. All right. Are we
19 comfortable with that? Merv.

20 MERVIN WRIGHT, JR.: A question maybe to
21 counsel, when we're looking at the stand-alone
22 action of the Committee, like we did in reaffirming
23 support for the amendment, as opposed to having a
24 reference in the report to Congress, you know, to
25 me it - those are two different things. And I

1 think with regard to the legality of argument,
2 let's just say, because this will probably turn
3 into an argument, I mean, what has greater standing
4 when it comes to those two matters of an issue
5 acted upon specifically and by the committee as
6 opposed to a reference in the report to Congress?

7 SHERRY HUTT: An action acted upon versus the
8 report to Congress?

9 ROSITA WORL: We have - okay. I think we - the
10 Review Committee acted to affirm its support for an
11 amendment. And then we had a report to Congress in
12 the first instance, where we also affirmed that
13 position in the report. And then we had another
14 report but did not take formal action to change
15 that position. So that's what we're asking for is
16 what -

17 SHERRY HUTT: Which is stronger?

18 ROSITA WORL: Yes, which has -

19 SHERRY HUTT: I don't know that you could
20 assess it one way or the other. We give the report
21 to Congress every year, and they really look
22 forward to it and they read it. And then it just
23 informs their action, so I can't tell you that they
24 regard one differently than another. In this
25 letter, I think Alec had said earlier that the

1 whole idea was to get them to regard you in any
2 future decision making, so that's the purpose.

3 ROSITA WORL: Okay. We still have a couple of
4 issues. We still have the letter here. Would this
5 letter suffice - would all the Review Committee
6 members be comfortable with the deletion of that?
7 Let's read it again, "for advising the Secretary on
8 matters relating to the implementation of the Act
9 regardless of our views on proposed definitions.
10 In the future, we would urge the Secretary and
11 Department to make better use of resources like the
12 Review Committee..." We could also just delete
13 that, "regardless of our views on the proposed
14 definitions and some of our members." We could
15 just say in the future, but then that -

16 SONYA ATALAY: I propose that. I would support
17 that. I think that's better.

18 ROSITA WORL: Okay. Are we comfortable with
19 that? Are there any objections? Okay. We've put
20 this back on the floor, for those of you who might
21 be parliamentarians out there. We reviewed it and
22 we acted on it, but we brought it back to the table
23 and we are now acting it on it again, which is the
24 prerogative of the Committee to do so. I don't
25 know that it's exactly the right way parliamentary

1 procedures, but it's fine if we all concur with
2 that.

3 Okay. So now let us again reaffirm that this
4 is the letter that we want to send, as revised.
5 Let's put that on the table with a formal motion.

6 **REVIEW COMMITTEE MOTION**

7 SONYA ATALAY: I move that with this — we send
8 this revised letter to Congress and to the
9 Secretary.

10 ROSITA WORL: Second?

11 ADRIAN JOHN: I'll second.

12 ROSITA WORL: Second. We have a motion made
13 and seconded. All those in favor, signify by
14 saying aye.

15 SONYA ATALAY: Aye.

16 ALEXANDER BARKER: Aye.

17 LINDALEE FARM: Aye.

18 ERIC HEMENWAY: Aye.

19 ADRIAN JOHN: Aye.

20 ROSITA WORL: Aye.

21 MERVIN WRIGHT, JR.: Aye.

22 ROSITA WORL: Those opposed say no.

23 Okay. Now we have the issue of the positions
24 of the Review Committee on the amendment to NAGPRA.
25 What is the wish of the Committee in proceeding

1 with this? Because we seem to have -- there is some
2 sense that the Review Committee took some action in
3 its report to Congress but did not formally act on
4 it, but we did act on accepting the report to
5 Congress. So what's the wish of the Committee?

6 MERVIN WRIGHT, JR.: I'm not really certain
7 whether or not, you know, an action at this point,
8 you know, would really hold any merit with regard
9 to the Administration's position. The
10 Administration has taken its position; it's out
11 there, and if we take action now and let's say it's
12 a split vote and it comes out in opposition, I
13 don't know what that's going to do. Or if it comes
14 out in support of it, I don't know what it would do
15 with regard to the relevance with the fact that we
16 have the position of the Administration at this
17 point.

18 ROSITA WORL: I'd like to comment on this, and
19 I'd ask if Sonya would Chair this part of the
20 committee, so that I could comment, because I
21 definitely have a definite view on this.

22 SONYA ATALAY: Yes, I'll Chair.

23 ROSITA WORL: Okay. For my perspective, I
24 think the Review Committee has been consistently,
25 you know, favoring the amendment. That's been

1 clear of the Review Committee. And my
2 understanding is that I hadn't heard any opposition
3 to that from the scientific committee - community,
4 I'm sorry, scientific community. And it seems that
5 in this instance, we were walking together, you
6 know, recommending this to Congress. This is an
7 action that Congress will take.

8 And from my perspective, the Review Committee
9 is significant in terms of stating its position as
10 to, you know, how are we going to deal with the
11 issues that were raised by the Kennewick Man? Do
12 we want to address - we want Congress to address
13 this so that we don't have the same kind of dispute
14 in the future. And you know, where we spent, you
15 know, I don't know how many hundreds of thousands
16 of dollars where we went to litigation on this
17 issue.

18 So I think if we want Congress to really view
19 the NAGPRA Committee that it created to deal with
20 the issues of NAGPRA, it seems to me that Congress
21 would be looking to this Committee on its position.
22 So it seems to me now we have a really unclarified
23 kind of a - not really firm position. So from my
24 perspective, I firmly believe in - I support that
25 amendment, and I would have no problems, you know,

1 voting on it.

2 And if others, you know, feel differently,
3 then I think we should hear that, and I – because I
4 don't know what happened. I have no idea why the
5 position was changed. And with all respect to the
6 Committee members – I was – I missed that meeting.
7 And so I was only brought in afterwards when I was
8 – as the Chair was trying to move on sending that
9 or reviewing the minutes. I guess it was the
10 minutes, because I didn't sign the minutes so I
11 didn't sign the report to Congress, because I
12 wasn't at that Committee meeting. So I asked at
13 that time, and I was just, you know, befuddled, you
14 know, what happened at that committee meeting. And
15 so I don't know what happened to change the
16 position of the Review Committee, and I for one
17 would love to have that clarified. So I would like
18 to bring it back to the table, Madam Chair.

19 SONYA ATALAY: Are there others who would like
20 to discuss, have anything to add, any further
21 discussion?

22 ALEXANDER BARKER: Discuss bringing it back to
23 the table or the substantive issue?

24 ROSITA WORL: No, I think the substantive –

25 SONYA ATALAY: The substantive issue –

1 ROSITA WORL: You could call for a motion.

2 SONYA ATALAY: Do you have any - Alex.

3 ALEXANDER BARKER: I think I may be the person
4 who is creating a bit of a lack of clarity, and in
5 fairness, I have to say that it's not because I
6 necessarily opposed the amendment. It's because I
7 have some concerns about it, and I don't feel at
8 this point I would be able to say I support it.
9 Specifically, I should explain that my concern is
10 that - and I think it was expressed beautifully in
11 the statement that the Department made, that the
12 amendment says that Native American should be
13 determined without regard for whether or not there
14 is biological or cultural affiliation with Native
15 American groups. And in concert with the
16 regulations under 10.11, we have moved from what I
17 had understood NAGPRA was based on, which was the
18 idea that ancestral remains should be returned to
19 descendant communities, to a new interpretation
20 which says it doesn't matter whether descendant
21 communities receive back ancestral remains. That
22 is a fundamental change, and until I have clarity
23 about how that's not the only way to construct the
24 current regulations, I'm very uncomfortable with
25 amending the law to further move from the idea of

1 ancestral remains being returned to descendant
2 communities. And I just need more clarity of my
3 own, for what it's worth.

4 Thank you, Madam Chair.

5 ROSITA WORL: Madam Chair, what I understood
6 was that the amendment – the amendment to the law
7 would clarify that all remains were indigenous –
8 are indigenous. The Secretary's letter said that
9 the process would not change, the process for
10 repatriation, so that's my understanding. The law
11 is – the amendment would say that all human remains
12 found were – after – what was that date?

13 MERVIN WRIGHT, JR.: 1776.

14 (Inaudible comments.)

15 ROSITA WORL: Okay. So at that date, those
16 preceding were not Native American. Those that
17 came afterwards were Native American. So the
18 amendment would state that all remains are Native
19 American – are to be considered Native Americans.
20 The process for repatriation would not change.
21 That's my understanding, and that was what the
22 Secretary's letter said.

23 SONYA ATALAY: Mervin.

24 MERVIN WRIGHT, JR.: And I know that, you know,
25 when this amendment went up on Capitol Hill, you

1 know, for actual Congressional consideration for
2 amending the law, Doc Hastings was one of the
3 strong opponents to it. And we've all recognized -
4 when I say we, tribal communities and a lot of us
5 that have been working on the issue of the
6 amendment, know that this amendment will not
7 affect, you know, the situation with the Kennewick
8 case. It can't reverse that case. Everything that
9 has been done with the case is done. But to stand
10 hard and firm that somehow it will is wrongheaded.

11 ROSITA WORL: Madam Chair?

12 SONYA ATALAY: Rosita.

13 **REVIEW COMMITTEE MOTION**

14 ROSITA WORL: You know, I would be prepared, I
15 feel very strongly about and impassioned about
16 proposing a motion that we support the amendment.
17 But in concern for my colleagues, I would propose
18 that this be an agenda item at our next meeting;
19 that we provide - that our DFO will provide us with
20 all of the background material; that we will look
21 at, you know, what happened with Kennewick and
22 clarifying what Merv has stated, that we have all
23 of the factual information before us and that the
24 Review Committee would consider it in its next
25 meeting. And that would be before the report to

1 Congress, right?

2 SHERRY HUTT: Uh-huh. And the letter is on the
3 board, Madam Chair, and in the materials. But
4 we'll move it to - we'll accumulate all for next
5 time. Did you still want to hear the update on the
6 Kennewick Man?

7 ROSITA WORL: Yes, that's a separate.

8 SHERRY HUTT: Yes, separately. Okay.

9 SONYA ATALAY: So was that a motion?

10 ROSITA WORL: That's my motion.

11 LINDALEE FARM: I would second that motion.

12 SONYA ATALAY: The motion has been made and
13 seconded. Is there any discussion?

14 I'll call the question. Will those in support
15 of the motion signify by saying aye?

16 ALEXANDER BARKER: Aye.

17 SONYA ATALAY: Aye.

18 LINDALEE FARM: Aye.

19 ERIC HEMENWAY: Aye.

20 ADRIAN JOHN: Aye.

21 ROSITA WORL: Aye.

22 MERVIN WRIGHT, JR.: Aye.

23 SONYA ATALAY: Those opposed?

24 The motion carries. It will be on the agenda
25 at the next meeting. And with that, I'll turn it

1 over to Rosita Worl to Chair the meeting.

2 ROSITA WORL: Thank you. I'm just looking at
3 where we are on the agenda.

4 SHERRY HUTT: The next item on today's agenda,
5 if you would, would be David Gadsby.

6 ROSITA WORL: Let's look at the time. How are
7 we with time?

8 SHERRY HUTT: We're really good on time. We're
9 - we have a - in the agenda, we have a break at
10 3:00 p.m. It's now 25 'til. So would - would you
11 want Jennifer Richman or David Gadsby next.

12 ROSITA WORL: No, the other agenda item that I
13 wanted to proceed that was our review of the
14 Columbia Plateau Inter-Tribal Group, their
15 presentation, if we could put that on the agenda.

16 SHERRY HUTT: And you wanted to address that
17 now?

18 ROSITA WORL: Yes.

19 SHERRY HUTT: Okay.

20 **DISCUSSION: PRESENTATION OF COLUMBIA PLATEAU INTER-**
21 **TRIBAL REPATRIATION GROUP**

22 ROSITA WORL: So we have the - the Columbia
23 Plateau Inter-Tribal Repatriation Group came to the
24 Committee this morning, and they made a number of
25 recommendations and expressed some concerns on